

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION

4 IN RE META PIXEL TAX FILING CASES

Master File No.: 22-cv-07557-SI (VKD)

5  
6 **This Document Relates to:**

**PUTATIVE CLASS ACTION**

7 All Actions

~~**STIPULATED [PROPOSED]**~~ **FEDERAL  
RULES OF EVIDENCE 502(d)  
CLAWBACK ORDER**

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9 Honorable Judge: Susan Illston  
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1           **1.     PURPOSE**

2           Pursuant to Federal Rules of Evidence 502(d) the production or disclosure of any documents  
3           protected from discovery, including under the attorney-client privilege, work product doctrine, the joint  
4           defense or common interest privilege, privacy laws and regulations, or any other immunity from  
5           discovery (collectively “privilege or protection”), and accompanying metadata (“Protected  
6           Documents”), does not, alone, result in the waiver of any privilege or protection, including subject  
7           matter waiver, associated with such Protected Documents as to the receiving party or any third parties  
8           in this or in any other state or federal proceeding regardless of the circumstances of the disclosure. This  
9           Paragraph provides the maximum protection allowed by Federal Rule of Evidence 502(d) with regard  
10          to Protected Documents. Federal Rule of Evidence 502(b) does not apply to any disputes regarding  
11          Protected Documents, and instead this Stipulated 502(d) Order governs all disputes regarding Protected  
12          Documents produced in this litigation. Nothing contained herein requires the production of Protected  
13          Documents, and no party is required to undertake a “quick peek” process under Fed. R. Civ. P. 26(b)(5).

14           **2.     CLAWBACK AGREEMENT**

15          In the event that a producing party discovers that it produced Protected Document(s), it shall  
16          provide written notice of the claim of privilege or protection to the receiving party (a “Clawback  
17          Notice”), sufficiently identifying the Protected Document(s) within ten (10) business days after  
18          discovery.

19          Within seven (7) business days following the production of the Clawback Notice, the producing  
20          party shall provide (i) if only a portion of the document contains privileged or protected material, a new  
21          copy of the document utilizing the same bates number(s) as the original that has been redacted to protect  
22          the privilege or protected material; or (ii) if the entire document is privileged or protected, a slip sheet  
23          identifying the same bates number(s) as the original noting that the document has been withheld. Any  
24          Protected Document that is the subject of a Clawback Notice will be included on a privilege log if and  
25          as required by the privilege-logging procedures agreed to by the parties or ordered by the Court.

1           **3.     PROCEDURES FOLLOWING CLAWBACK NOTICE**

2           (a)     Within fourteen (14) business days of receipt of a Clawback Notice (regardless of  
3 whether the receiving party agrees with or plans to challenge the producing party's claim of privilege  
4 or protection), the receiving party must promptly return and/or destroy the Protected Document(s), all  
5 copies thereof, and any notes that reproduce, copy, or otherwise disclose the substance of the Protected  
6 Documents and certify to the producing party when this return and/or destruction is complete.

7           (b)     If a receiving party challenges a claim that a Protected Document specified in a  
8 Clawback Notice is privileged or protected, the receiving party shall notify the producing party of its  
9 challenge within fourteen (14) business days of receiving the Clawback Notice.

10          (c)     Notwithstanding the provisions of section 3(a), above, if a receiving party challenges a  
11 claim that a Protected Document specified in a Clawback Notice is privileged or protected, the  
12 receiving party must promptly sequester the Protected Document and any and all notes that reproduce,  
13 copy, or otherwise disclose the substance of the Protected Documents—including all copies of such  
14 notes in electronic form—and the receiving party shall not use such information for any purpose, except  
15 as provided herein, until further Order of the Court or upon agreement by the parties. If the producing  
16 party's challenged clawback is ultimately successful or the receiving party withdraws or fails to pursue  
17 its challenge to the Clawback Notice, the receiving party must promptly return and/or destroy the  
18 Protected Document and any and all notes that reproduce, copy, or otherwise disclose the substance of  
19 the Protected Documents and certify to the producing party when this return and/or destruction is  
20 complete.

21          (d)     Within ten (10) business days of the producing party receiving notification of the  
22 challenge, the parties shall meet and confer in an effort to resolve their disagreement. If the parties are  
23 unable to resolve their disagreement, either party may submit the issue to the Court for a determination.

24          (e)     The receiving party must not use or disclose the Protected Document(s) covered by the  
25 Clawback Notice during the time in which the receiving party is challenging the Protected  
26 Document(s).

1           **4. PROCEDURES DURING DEPOSITION AND HEARING**

2           (a) If, during a deposition, a producing party claims that a Document being used in  
 3 the deposition (e.g., marked as an exhibit, shown to the witness, or made the subject of  
 4 examination) contains material that is privileged or protected, the producing party may, in its sole  
 5 discretion, do one or more of the following: (a) allow the Protected Document to be used during the  
 6 deposition without waiver of any claim of privilege or protection; (b) allow questioning about  
 7 the Protected Document but instruct the witness not to answer questions concerning the parts of  
 8 the Protected Document containing privileged or protected material; or (c) object to the use of  
 9 the Protected Document at the deposition, in which case no questions may be asked  
 10 and no testimony may be given relating to the Protected Document or the privileged or protected  
 11 portion of the Document until the matter has been resolved by agreement or by the Court. In all events,  
 12 once the Protected Document is no longer in use at the deposition, the receiving  
 13 party shall immediately sequester all copies of the Document, pursuant to Paragraph 3(a). As to any  
 14 testimony subject to a claim of privilege or protection, the producing party shall serve  
 15 a Clawback Notice within four (4) business days after receipt of the final transcript of the deposition,  
 16 after which the parties shall follow the procedures set forth in Sections 2 and 3, as applicable. Pending  
 17 determination of the any challenge to such a Clawback Notice, all parties with access to the deposition  
 18 transcript shall treat the relevant testimony in accordance with Section 3. In the event the Court decides  
 19 the clawback dispute in the receiving party's favor and the receiving party was denied the opportunity  
 20 to examine a witness as to the materials at issue, the witness shall be made available as soon as  
 21 practicable after the Court's decision.

22           (b) If a receiving party uses discovery materials in a brief or at a hearing, and the producing  
 23 party has not served a Clawback Notice as to those materials in advance of the briefing event or hearing,  
 24 the producing party must serve a Clawback Notice within four (4) business days of receipt of the  
 25 briefing or the hearing. Thereafter, the procedures set forth in Section 3 apply. The producing party,  
 26 with the assistance of the receiving party as necessary, shall coordinate the removal of any protected  
 27 material from the public record and file, or prepare a document to be filed by the receiving party, any

1 necessary amended public and/or redacted filings that contain the privileged or protected material.  
2 Failure to serve a Clawback Notice within four (4) business days of receipt of the briefing or hearing  
3 event shall be deemed a waiver of any privilege or protection regarding the materials used therein.

4 **5. MISCELLANEOUS**

5 Nothing in this Stipulation is intended to create an obligation for a party to conduct a privilege  
6 review of another party's discovery material. Notwithstanding, to the extent any party is aware that it  
7 has obtained Protected Documents, the receiving party must notify the producing party that it has  
8 received or examined document(s) that are or may be subject to a claim of privilege or protection,  
9 promptly sequester the document(s), and, within ten (10) business days of such discovery, notify the  
10 producing party by identifying the bates ranges of the documents. If the producing party determines  
11 that the documents are privileged or protected, the producing party must then provide a Clawback  
12 Notice in accordance with the procedures set forth in this Order.

13 ~~**IT IS SO STIPULATED, through Counsel of Record.**~~

Dated:

~~BURSOR & FISHER, P.A.~~

By: \_\_\_\_\_  
~~Joel D. Smith~~

~~Joel D. Smith (State Bar No. 244902)  
Neal J. Deckant (State Bar No. 322946)  
1990 North California Blvd., Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
E-mail: jsmith@bursor.com  
ndeckant@bursor.com~~

~~GEORGE FELDMAN MCDONALD, PLLC~~

~~Lori G. Feldman (*pro hac vice*)  
102 Half Moon Bay Drive  
Croton-on-Hudson, New York 10520  
Telephone: (917) 983-9321  
Facsimile: (888) 421-4173  
E-mail: lfeldman@4-justice.com  
eservice@4-justice.com~~

~~*Steering Committee Co-Chairs for Plaintiffs and the Class*~~

~~THE HODA LAW FIRM, PLLC~~

~~Marshal J. Hoda (*admitted pro hac vice*)  
12333 Sowden Road, Suite B, PMB 51811  
Houston, TX 77080  
Telephone: (832) 848-0036  
Facsimile: (832) 201-0364  
E-mail: marshal@thehodlawfirm.com~~

~~LOCKRIDGE GRINDAL NAUEN P.L.L.P~~

~~Rebecca A. Peterson (State Bar No. 241858)  
Kate M. Baxter-Kauf (*admitted pro hac vice*)  
100 Washington Avenue South, Suite 2200  
Minneapolis, MN 55401  
Telephone: (612) 339-6900  
Facsimile: (612) 339-0981  
E-mail: rapeterson@locklaw.com  
kmbaxter-kauf@locklaw.com~~

~~FOSTER YARBOROUGH, PLLC~~

~~Patrick Yarborough (*admitted pro hac vice*)  
917 Franklin Street, Suite 220~~

Houston, TX 77002  
Telephone: (713) 331-5254  
E-mail: patrick@fosteryarborough.com

~~Plaintiffs' Steering Committee Members~~

~~Dated:~~

~~Attorneys for Defendant Meta Platforms, Inc.~~

**GIBSON, DUNN & CRUTCHER LLP**  
LAUREN R. GOLDMAN (pro hac vice)  
lgoldman@gibsondunn.com  
200 Park Avenue  
New York, NY 10166  
Telephone: (212) 351-4000  
Facsimile: (212) 351-4035

ELIZABETH K. MCCLOSKEY (SBN 268184)  
emccloskey@gibsondunn.com  
ABIGAIL A. BARRERA (SBN 301746)  
abarrera@gibsondunn.com  
555 Mission Street, Suite 3000  
San Francisco, CA 94105  
Telephone: (415) 393-8200  
Facsimile: (415) 393-8306

order is entered.  
**IT IS ORDERED** that the forgoing Agreement is approved.

Dated: May 2, 2023



UNITED STATES MAGISTRATE JUDGE

Virginia K. DeMarchi